

IOGLB Public Hearing

Date: November 13, 2013

Reporter: Kelsie A. Medrano, CSR No. 1012

Associated Reporting and Video Inc.

Phone: 208.343.4004

Fax: 208.343.4002

Email: production@associatedreportinginc.com

Internet: www.associatedreportinginc.com



Pages: 1 to 47

IDAHO OUTFITTERS AND GUIDES LICENSING BOARD

PUBLIC HEARING

HELD ON THE 13TH DAY OF NOVEMBER, 2013

COMMENCING AT THE HOUR OF 3:02 P.M.

CLINT & GRAHAM BUILDING

1365 NORTH ORCHARD STREET

BOISE, IDAHO

Kelsie A. Medrano, CSR #1012

A P P E A R A N C E S**NAYLOR & HALES**

Roger Hales, Attorney for the Board
950 West Bannock Street, Suite 610
Boise, Idaho 83702
Telephone: (208) 383-9511
Facsimile: (208) 383-9516
rjh@naylorhales.com

BOARD MEMBERS:

Jake Howard, Executive Director
Wayne Hunsucker, Chairman
Tom Long, Board Member
Chris Korell, Board Member
Louise Stark, Board Member
Lori Thomason, Secretary

SPEAKERS	PAGE
Paul Waldon.....	8
Bryce Cook.....	16
Bill Fuchs.....	20
Grant Simonds.....	25
John Watts.....	28
Jay Stark.....	37
Mike Lawson.....	40
Larry Fry.....	44

P R O C E E D I N G S

MR. HUNSUCKER: I'm going to go ahead and call the meeting to order. This is a scheduled meeting for the Outfitter and Guides Licensing Board. And this is the time and place for a public hearing that we have set. Roger Hales is our attorney, acting as if -- or he's acting as the moderator for the hearing. And he will have a few opening comments. And he will set the guidelines for how the meeting is going to be run.

We do have to be out of here at 5 o'clock at the very latest. With that, I'll turn it over to Roger.

MR. HALES: Well, thank you, Mr. Chairman. Welcome. Good afternoon. As the Chairman stated it's the time and place set for the hearing on the Board's proposed rules. And these rules have been published in the administrative bulletin, they have been placed on the Board's website, and they're also available for your review. There's various copies that have been left on the chairs there.

I'm going to kind of summarize where we've been and where we're at.

Obviously, at its August meeting the

1 Board concluded its negotiated rulemaking process
2 which initially came about as a result of the need
3 to address the long-standing moratorium prohibiting
4 new applications for outfitted turkey and waterfowl
5 hunting. The negotiated rulemaking conducted by
6 the Board included six public hearings throughout
7 the state. This was done after an earlier working
8 group process which included representatives and
9 various stake holders. Additionally, several
10 surveys were conducted and examined by the Board.

11 At the beginning of the working group
12 meeting and throughout this process, the Board has
13 pointed out that it has had the statutory authority
14 to license outfitters for turkey and waterfowl
15 hunting since its formation years ago. The board
16 has also pointed out that the self-imposed
17 moratorium was informal and would probably not
18 withstand legal challenge, and that the law
19 requires that it must possess a reasonable basis
20 and law, in fact, to deny or limit an application.

21 After considering various versions of
22 the draft rule that had been disseminated over the
23 last 18 months and written comments and testimony
24 hearings that came as a result, the Board
25 ultimately decided to set aside the rulemaking for

1 outfitted turkey and waterfowl hunting, making the
2 decision to abandon the rulemaking on the turkey
3 and waterfowl issue.

4 The Board concluded that the various
5 interests remain polarized with the sides fixed in
6 their positions and a compromised solution was not
7 possible. Some comments went as far as to
8 challenge the Board's authority and its decision to
9 address the long-standing moratorium. With this in
10 mind, the Board has decided to exercise its
11 statutory responsibilities and, in doing so, will
12 begin accepting a process and application for
13 outfitted turkey and waterfowl hunting on a
14 case-by-case basis like it does other outfitted
15 activities.

16 In doing so, the Board will use
17 information garnered in this process based upon the
18 policy it has adopted in regards to certain
19 limitations on the potential licensing of outfitted
20 turkey and waterfowl hunting.

21 During the negotiated rulemaking
22 process, concerns surfaced over individuals,
23 membership groups, clubs, and organizations that
24 provide, or attempt to provide, outfitted
25 facilities and services without meeting outfitter

1 license requirements and limitations. The Board
2 has concluded that clarification of these issues
3 are important to many of the sportsmen involved in
4 the outfitting industry and the licensed
5 outfitters. Consequently, the proposed rules would
6 address these matters and clarify when the
7 individual persons who are simply sharing costs are
8 exempt from licensure.

9 One fundamental matter, greatly
10 influenced in its decision during the process, was
11 emphasized by state leaders, was that state
12 regulatory agencies must consistently recognize
13 landowners' right to control use of their lands.
14 This control could include private landowners'
15 decision to allow or not to allow access to their
16 land for outfitting purposes or other commercial
17 purposes or for public use of any kind.

18 With the growing interest in the
19 outfitting on private land and private landowners
20 practice in charging trespass fees and related
21 matters, such as the Idaho Fish and Game's
22 administration for landowner appreciation tags, the
23 Board also concluded that there is a need to
24 establish a rule in order to clarify a landowner's
25 responsibilities when it comes to licensure as well

1 as those of an existing outfitter when it comes to
2 being licensed and operating on private land.

3 The proposed rule captures the Board's
4 historical practices and the comments received
5 during the negotiated rulemaking process. The oard
6 believes this rule would be a benefit to all
7 interested parties. Based upon those decisions,
8 the Board did publish this proposed rule.

9 We are now set for the Board to hear
10 comments that the public may have. The Board is
11 certainly interested to considered those. The
12 Board does have an opportunity to revise the
13 proposed rules in response to comments today.

14 Having said that, as the Chairman
15 stated, the notice provided that the board would
16 conduct this hearing between 3 and 5 o'clock today.
17 So it will end at 5 o'clock.

18 The Board needs to hear from various
19 people here. In an effort to do that, the Board is
20 going to require that each person be limited to
21 seven minutes in their comments to the Board.
22 Comments should be based upon the proposed rule.

23 Having said that, I think we're ready to
24 proceed.

25 Board members, are you ready?

1 So the first name on the list is Tyler
2 Mallard.

3 Tyler, any desire to comment?

4 Oh, I apologize. I guess there's a
5 space where it marks that they're going to testify.
6 Next person on the list is Paul Waldon.

7 Mr. Waldon?

8
9 PAUL WALDON,
10 came forward and gave the following statement:

11
12 MR. WALDON: Yes, I would like to comment.

13 Good afternoon, Director Howard,
14 Chairman, and the rest of the board members.

15 My name is Paul Waldon, and I have lived
16 in Boise for almost 34 years. I've hunted
17 waterfowl in Idaho since moving here in 1980 and
18 turkeys in Idaho since 1983, not missing a single
19 season. I served as a sportsmens' representative,
20 representing Idaho turkey hunters and Idaho State
21 and the Idaho State chapter of the National Wild
22 Turkey Federation on the outfitted turkey and
23 waterfowl advisory group. Our process began in
24 early March of 2010.

25 As you well know, we could not reach a

1 consensus on many issues throughout the lengthy
2 process because, as hunters, we felt we had nothing
3 to gain and much to lose. On the contrary, the
4 outfitters had much to gain and nothing to lose.
5 Nonetheless, we saw the process through, not quite
6 sure where it would take us.

7 In the end we saw Draft D and concluded
8 that regardless of the overwhelming negative
9 comments, primarily related to outfitted waterfowl
10 and turkey hunting, fielded by the Licensing Board,
11 by a letter, email, and public hearings throughout
12 the state, we'd have to see the process run its
13 course. Let's stop.

14 We were hoodwinked at the August 13th
15 board meeting. A coached, calculated motion was
16 put forth that would disregard all of the public
17 involvement, all of the public comments, and ignore
18 the multiyear process, crafting a draft rule for
19 negotiated rulemaking for turkey and waterfowl by
20 simply adopting all things associated with turkey
21 and waterfowl hunting into policy.

22 Which brings us to today's proceeding,
23 discussing two components of our multiyear efforts
24 upon which we spent the least amount of time.
25 Clubs are an enforcement issue, and responsibility

1 to enforce existing rules lies with the Licensing
2 Board. The private landowner component, again, is
3 more of an enforcement or even an educational
4 issue. The leasing provision within which, in
5 paragraph 2, Sub B, Sub 3, must be pointed out as
6 it was a deal breaker throughout the entire
7 process, and we said it repeatedly.

8 So we contacted an attorney -- a highly
9 regarded local attorney who is very well-versed in
10 Idaho State law -- and we asked him for an opinion
11 as to where we stand. And I'm going to read some
12 of his findings.

13 We asked, one, whether there is any
14 guidance regarding when agency rulemaking is
15 required; and, two, whether any such agency
16 standards would apply to the Idaho Outfitters and
17 Guides Licensing Board.

18 The short answer to both of these is:
19 Yes.

20 Further, we asked whether there is any
21 formal oversight for agency policy similar to the
22 process for rules review. The answer to that is:
23 No.

24 The Outfitters and Guides Licensing
25 Board is a state regulatory agency created pursuant

1 to Outfitters and Guides, Chapter 21. I could read
2 all of these. The Board is subject to IDAPA,
3 contained in Chapter 52, Title 67, Idaho Code,
4 which governs rulemaking. This is made clear in
5 Idaho Code 36-2119 which applies to board orders
6 and rules: "The board is expressed statutory
7 authority to issue rules under Idaho Code, Section
8 36-2107, as it previously adopted extensive rules
9 for the Outfitters and Guides Licensing Board.
10 IDAPA 25.01.01."

11 Under IDAPA and applicable decisions
12 from the Idaho Supreme Court, "an agency cannot
13 adopt policies or guidance" -- that are really
14 rules -- "without going through the formal
15 statutory rulemaking process. Any rule that is
16 adopted without going through the required formal
17 rulemaking process, which includes legislative
18 review, is void. Idaho Code 67-5231."

19 Unlike rules which are subject to
20 legislative oversight review and approval or
21 rejection under IDAPA, agency policies are not
22 subject to legislative oversight review, approval,
23 or rejection. Basically, they're considered
24 internal documents.

25 Key question then is: What constitutes

1 a rule as opposed to a policy or guidance? Under
2 IDAPA, a rule is the whole or part of an agency
3 statement of general applicability that implements,
4 interprets, or prescribes, a) law or policy; b) the
5 procedure or practice requirements of an agency.
6 The term includes the amendment, repeal, or
7 suspension of an existing rule but does not
8 include, one, statements concerning only the
9 internal management or internal personnel policies
10 of an agency or declaratory rulings or interagency
11 memoranda or any written statements given by an
12 agency which pertains to interpretation of a rule
13 or to the documentation of compliance with the
14 rule. The Idaho Supreme Court has ruled that an
15 agency action is a rule if, one, it is a statement
16 of general applicability; two, implements,
17 interprets, or prescribes existing law, as in *Sarco*
18 *v. State of Idaho*, 138 Idaho 719 723, year 2003.

19 In determining whether agency action is
20 ruled, the Court considered the following
21 characteristics of agency action indicative of
22 rule: One, wide coverage; two, applied generally
23 and uniformly; three, operates only in future
24 cases; four, proscribes illegal standard or
25 directive not otherwise provided by the enabling

1 statute; five, expresses agency policy not
2 previously expressed; and, six, is an
3 interpretation of law or general policy. To
4 determine whether it is, in fact, a rule, the Board
5 policy regarding guiding services for hunting
6 waterfowl and turkeys would need to be analyzed
7 under the APA definition of the Court's guidance
8 regarding what agency action constitutes a rule.

9 This attorney did look at the minutes of
10 the August 2013 meeting, as well as Board's
11 September 9, 2013, release and it said, "Board
12 reaches decision on negotiated rulemaking. The
13 most recent draft rules dated Feb-18-2013, Option
14 C, and August 6, 2013, D, and report from the
15 Outfitted Waterfowl and Turkey Advisory Group dated
16 January 21st, 2011," prepared by Bootstraps Lucian
17 of Boise, as well as other documents posted on
18 their website. The report contained summaries of
19 the various meetings held by the advisory group.

20 The fourth meeting held on August 21st,
21 2010, included a briefing by lawyers representing
22 the Idaho Outfitters and Guides Licensing Board and
23 the Idaho Department of Fish and Game. They told
24 the group that the Board has two options in
25 implementing new policy: They can adopt a rule

1 pursuant to IDAPA, or the they can seek to enact a
2 new law/statute through the legislative process.
3 If they adopt new policy via rulemaking, the rule
4 must be supported by the law, which were then
5 subject to judicial review, if challenged.

6 Agencies sometimes adopt policies to
7 clarify existing statute, or rules, or laws because
8 those types of policies by themselves do not have
9 the force of law.

10 MR. HALES: Mr. Waldon, I'm going to have to
11 ask you to wrap it up.

12 MR. WALDON: I have two paragraphs left.

13 The Board's meeting August 13, 2013,
14 included an agenda item entitled Board Action,
15 Negotiated rulemaking, Clubs, Private Lands,
16 Outfitted Turkey and Waterfowl Hunting. The
17 minutes state that the Board was beginning a formal
18 rulemaking process, and that was published October
19 2. The Board would consider comments and so forth,
20 and here we are: A motion to move forward to the
21 formal rulemaking, whether proposed rule pertaining
22 to organizations, groups, clubs, and individuals
23 sharing costs, proposed rules for private land,
24 and the provisions pertaining to outfitted turkey
25 and waterfowl hunting -- paragraphs 3, 4, and 5 of

1 Draft Rule D -- to be placed into policy only was
2 approved by the Board.

3 This seems to be at least a partial
4 departure from the statements contained in the
5 Board's spring 2012 newsletter, which provided the
6 Board was moving forward with negotiated
7 rulemaking, that rules were ready for the 2014
8 legislature including rules for outfitted turkey
9 and waterfowl hunting. The newsletter did not
10 mention any policy only for outfitted turkey and
11 waterfowl hunting.

12 The Board, on September 9, 2013, in
13 their release, characterized the Board's August
14 meeting as a decision to abandon the rulemaking on
15 turkey and waterfowl because the policy is of
16 general applicability, is interpreting state laws,
17 sets forth procedures, and it appears to meet the
18 definition of a rule under Idaho Code 67-52-01-19.

19 Therefore, if it is adopted without
20 going through the rulemaking process, it is void
21 pursuant to Idaho Code 67-52-31. This is supported
22 by reading, again, the Idaho Supreme Court decision
23 on Sarco v. State of Idaho, 138 Idaho 719 year
24 2003. Also the policy appears to have been taken
25 directly from the previous draft rule.

1 Bottom line, my opinion is it is a rule
2 and needs to go through the formal rulemaking
3 process including review by the state legislature,
4 otherwise, it's invalid.

5 MR. HALES: Thank you. Looks like the next
6 on the sign-in sheet is Bryce Cook.

7
8 BRYCE COOK,
9 came forward and gave the following statement:

10
11 MR. COOK: Mr. Chairman, board members, so
12 my name is Bryce Cook. I was also on the waterfowl
13 turkey advisory group. I've spoke to you probably
14 more than I can count on one hand. Thank you for
15 letting me speak again today.

16 I'm here to speak in opposition to the
17 proposed rule docket. I attended multiple
18 negotiated rulemaking hearings, and members of my
19 organization did, on this rule over the last year.
20 Our opposition kind of comes three-fold. Paul did
21 a very good job of covering the legal aspect. I
22 just want to cover a few different things.

23 The original docket that came out in
24 2012 was much more specific to waterfowl and turkey
25 outfitting. I believe there was about seven

1 paragraphs in the summary section where six of them
2 were specific to waterfowl and turkey. That was
3 the original docket announcing when we were going
4 to have public hearings.

5 The docket that we're looking at today
6 is a very small subset of that. So I feel there's
7 a lot of stakeholders that were left out of this
8 negotiated rulemaking.

9 The docket you're publishing today
10 covers boating and all other outfitted activities.
11 It wasn't really advertised as that. Even the
12 advertisements that went out in The Statesman were
13 waterfowl and turkey hearings. So you have a lot
14 of stakeholders that were left out in a negotiated
15 rulemaking because this thing changed so much over
16 the time. So the waterfowl and turkey section was
17 taken out and passed and was just called policy.

18 I'm urging my fellow sportsmen to
19 contact their legislators to reject this docket
20 based on the fact that original notice of intent to
21 what we have today is nowhere near the same. And
22 those subsequent public hearings did not attract
23 correct stakeholders.

24 Secondly, like Paul, I believe that the
25 sportsmen of Idaho were scammed or manipulated in

1 this. We participated in advisory groups, we
2 participated in the negotiated rulemaking process
3 over the last year. We expected something to
4 continue in rulemaking. We don't believe that the
5 so-called policy is valid based on the legal
6 aspects that we've seen, and it wouldn't stand up
7 in court.

8 I know many sportsmen have already
9 spoken to their legislators and were expressing
10 that we feel cheated. I actually think that the
11 legislators were cheated here because, according to
12 IDAPA, this should be a rule. Both the
13 professional legal advice that we got, as well as
14 our initial contacts with state legislators, are
15 saying that they feel cheated; that they shouldn't
16 be signing off on this; it should not be in policy.

17 If you look at what the Licensing Board
18 has in policy, it's things like employee work
19 hours, vague things, not things with specific items
20 like numbers. If you look at what you have in
21 IDAPA rules, it's things like which river sections,
22 how many outfitters are going to be in this area,
23 that stuff is IDAPA rules. That's what you have in
24 the waterfowl policy is really IDAPA rules.

25 Finally, I believe that some of the

1 members of the Licensing Board acted out of their
2 roles here. One member is a Fish and Game
3 Commission representative, and one member is to
4 represent the public. The Fish and Game has an
5 official position on waterfowl and turkey
6 outfitting. They're not in favor of it. It's been
7 that way since '06. It's coming back to them
8 tonight -- tomorrow, tonight's the public hearing
9 on it in Jerome.

10 The public representative also voted in
11 favor of this even though there is clear public
12 opposition. You received 50 pages of written
13 comments regarding this. In those 50 pages of
14 written comments, there were 68 unique contributors
15 against it and five unique in favor. I attended
16 two of the public hearings and spoke with people
17 that attended many of the other public hearings in
18 the state. It was over ten to one against it, and
19 it still went through as policy. Those comments
20 are going to get printed off and sent to my
21 legislator, and I'm going to get all the members of
22 my organization to send them to their legislators.
23 We shouldn't have comments like that one-sided and
24 have something still go through without going to
25 the legislature and getting debated and figuring

1 out how it should work correctly.

2 If this isn't reviewed and the policy
3 looked at as more of an IDAPA rule, we are also
4 going to go back and call the Governor's office for
5 removal of people on the Fish and Game -- the
6 representative or the public representative. I
7 don't want to have vague threats; I'm not trying to
8 threaten. I'm just saying that we feel cheated,
9 and we don't feel like there's a lot of other
10 opportunities here.

11 We all went through this process as
12 rulemaking and then, all of a sudden, it became
13 policy. And I asked Jake for the copy of "policy."
14 And policy is things that are, you know, general
15 agency operation things, not specific numbers, not
16 specific regions, not specific river sections;
17 that's in our IDAPA, rules same as fishing.

18 That's about all I have. Thanks for
19 your time.

20 MR. HALES: Thank you. Looks like Bill
21 Fuchs.

22
23 BILL FUCHS,
24 came forward and gave the following statement:
25

1 MR. FUCHS: My name is Bill Fuchs. I live
2 in Freemont County. Thanks for your time. I'm
3 over here for this meeting, and I appreciate the
4 opportunity to be here again.

5 I originally came to the Fish and Game
6 Commissioners meeting in '09 and just asked them
7 what I could do to become an outfitter of waterfowl
8 hunting on my own property. And they said, "Well,
9 we have this moratorium," long history, and
10 everything else. And I've been a little bit in the
11 loop of what's going on ever since then.

12 I guess for my thoughts is that I don't
13 understand why waterfowl hunting is any different
14 than any other activity that's regulated through
15 the Outfitters and Guides system. Maybe I'm naive
16 on that, but, you know, there's outfitters for big
17 game, or sections of river for white water, and I
18 didn't understand why the moratorium was enacted or
19 why it lasted so long. But I've submitted some
20 letters to your Board and to Fish and Game and
21 stuff over these years, and it still brings me back
22 to: Why can't I offer this on my own property?

23 I have a unique -- I'm very blessed with
24 a piece of property. It's not a huge ranch, but
25 it's very nice. It's on the Snake River in

1 Freement County. And I just want to be able to
2 take some of my friends -- I have a rental on
3 there, an old homestead cabin that people come and
4 enjoy what Idaho has to offer. Between Yellowstone
5 and Jackson Hole, people just come here. If Idaho
6 is in the tourism business, which is what I'm
7 offering to our guests, one of those things should
8 be waterfowl hunting here.

9 Well, there is some grandfathered
10 outfitters in that area over there, but there isn't
11 much opportunity to actually take advantage of the
12 waterfowl hunting that we have there. It's not
13 like Arkansas where they have huge flocks or
14 anything like that, but we have some waterfowl. So
15 I would just like to be able to offer our guests --

16 I have one cabin. It's not a big
17 money-maker thing, but I give our guests the
18 ability to spend some time, reconnect, get away
19 from their busy lives, from Florida or Texas or
20 whatever, and see what Idaho has to offer. And
21 that's what I'm offering to them. I'm the third
22 generation that's been responsible for that piece
23 of property. We own it, and so it's kind of our
24 playground, and I just want to share that with
25 other people.

1 I have had people come from Texas --
2 well, from all over the world. Recently, some
3 people came from Texas and Florida, a group of
4 guys. And they said, "We would like to go duck
5 hunting while we're there and see Yellowstone, all
6 the other things they can do over here," and I
7 said, "Well, I'm not an outfitter, I'm not a guide;
8 if you want to come and hunt waterfowl in Idaho,
9 you got to bring your decoys, your dog, your guide,
10 all of these things from Florida."

11 Well, does that get a little cumbersome?
12 So I said, "Well, you guys are on your own." Well,
13 they showed up and tried to do the best they can.
14 They didn't have anything so they didn't have a
15 very good time; some of them have, down in state
16 wildlife refuges and things like that, but they
17 don't have the full experience of waterfowl hunting
18 that it can be with the right people and equipment
19 and everything else.

20 So, I guess, through all that, that's
21 kind of my opinion.

22 I just have a couple of questions from a
23 property owners standpoint.

24 Will all property owners, if you pass
25 this, be allowed to be an outfitter on their own

1 property? Because I know on some of the other
2 outfitting licenses or by specific area or
3 whatever, but because it's my property, will I be
4 -- is there any limit on how many property owners
5 can be outfitters in certain areas on your own
6 property? My first question.

7 And what is the estimated cost of
8 property owner -- you know, I can't hunt ducks
9 everyday, and I saw the limits on the number of
10 hunting days. But ducks won't stay at my place if
11 I hunt them every day. And I only have one cabin,
12 so it's low pressure. But it gives them a quality
13 time. It's not about how many ducks you get;
14 waterfowl hunting these days is more about the time
15 with the guests, your friends, your dogs, seeing
16 the whole experience.

17 There's waterfowl hunting that has a lot
18 of history, and good things that happen there. You
19 don't have to get to the top of a mountain, you can
20 usually get there fairly simply. So it's good for
21 old and young and women and men. I would say it's
22 a great way to let people from other places have a
23 quality experience in Idaho. Right now that's hard
24 to do if you're coming from somewhere else and
25 wanting to come to Idaho and waterfowl hunt.

1 That's all I've got.

2 MR. HALES: Thank you, sir. Looks like the
3 next name on the list who wants to testify is Grant
4 Simonds.

5
6 GRANT SIMONDS,
7 came forward and gave the following statement:
8

9 MR. SIMONDS: Thank you, Mr. Chairman, board
10 members.

11 My name is Grant Simonds. I'm the Idaho
12 Outfitters and Guides Licensing and government
13 affair liason and was a member of the waterfowl and
14 turkey advisory group and have been following this
15 topic for a number of years, going back to the late
16 '80s.

17 First of all, I want to commend the
18 Licensing Board for the extensive outreach relative
19 to these negotiated rulemaking hearings held all
20 over the state. There has been a number of
21 opportunities to testify before the Board. And so
22 the public has had a lot of opportunities to be
23 involved throughout this process over the past year
24 and a half. IOGA commends the IOGLB with
25 clarifying the existing rules to address the

1 concern of loss of the hunting access due to the
2 proliferation of organizations and clubs during the
3 past half century. Some of them have operated
4 essentially as outfitters, perhaps due to the
5 ambiguity of the existing rules. Those clubs who
6 wish to provide services associated with outfitting
7 and guiding will now need to be licensed. This is
8 as it should be. The proposed rule recognizes the
9 landowners' right to control the use of their lands
10 as it relates to outfitted use when facilities and
11 services are provided by the landowner or by
12 someone authorized by the landowner to do so.

13 Since there was little to no consensus
14 on major issues associated with outfitted waterfowl
15 and turkey hunting during the past three years of
16 group meetings, as well as through the recent
17 various range of options offered by the IOGLB, the
18 agency is right to leave the details on future
19 opportunities for outfitted waterfowl and turkey
20 hunting in the form of policy number 2027.1-2013.

21 This policy states that, quote,
22 outfitted Idaho turkey waterfowl hunting on private
23 lands or waters will be accepted on a case-by-case
24 basis, unquote.

25 The policy also states in 02.ii that,

1 quote, areas for waterfowl hunting will be reviewed
2 for inclusion and exclusion on the list of 02.1 as
3 needed by the Board with input from the Idaho
4 Department of Fish and Game.

5 The IOGLB is right to include the
6 provisions in the policy regarding both existing
7 outfitters for waterfowl and turkey outfitting. It
8 has always been important to the industry that
9 existing outfitters may be given priority to fill
10 unlimited license opportunities. In the same
11 breath, the IOGLB should remain open to new
12 opportunities for these activities as there can be
13 new ideas that can and will meet muster for
14 licensing of these activities, especially given the
15 fact that many Idahoans now take their outdoor
16 recreation out of the state for these two
17 activities. It certainly would enhance the
18 opportunity as well as the Idaho economy if Idaho
19 could retain more and more of these displaced
20 hunters in the future.

21 Thank you, Mr. Chairman, for the
22 opportunity to comment.

23 MR. HALES: Thank you. Next on the sign-up
24 list is John Watts.
25

1 JOHN WATTS,
2 came forward and gave the following statement:
3

4 MR. WATTS: Mr. Chairman, members of the
5 board, counselor, thank you very much for allowing
6 me to testify today.

7 My name is John Watts. I am the partner
8 of Veritas Advisors and a registered legislative
9 advisor and counselor to Boulder Creek Outfitters
10 owned by Tim and Matt Craig operating in Idaho
11 since 1978 and licensed generally for areas near
12 Peck, White Bird, Selway, and the Joseph Plains.

13 I, like Mr. Simonds before me, have a
14 long history in this issue; that of involvement
15 when I was working with the Idaho Outfitters and
16 Guides Association, as well as individual
17 outfitters as well as landowners.

18 I recall in 2002, private landowners and
19 outfitters and land management agencies and private
20 hunters all gathered in Weiser, and there was a
21 great fear of losing private land access to a
22 landowner based upon ranch or outfitter business,
23 an arrangement that would somehow exclude a private
24 hunter who gave a Christmas ham or some other gift
25 or commodity for favorable access. That was the

1 key takeaway message.

2 The rule before us comes from an ongoing
3 discussion about outfitting and guiding wildlife in
4 Idaho; in this instance, turkey and waterfowl bird
5 species. The debate certainly didn't start in 2009
6 leading up to a moratorium on outfitting and
7 guiding turkeys and ducks, nor did it start a few
8 summers ago as it then spanned the months and
9 spread the miles, literally, with the Outfitters
10 and Guides Licensing Board Advisory Working Group
11 at their many meetings and several public hearings;
12 and it will not end today with the IOGLB decision.
13 They will continue as long as there are two sides
14 to every coin, two sides to every creek, and two
15 hunters that want to hunt on the same place.

16 The good news is issues change and
17 people evolve and rational minds meets. The IOGLB
18 Advisory Working Group did just that. Good comes
19 from discussion, review, contemplation, compromise,
20 and here we are today.

21 Rather than express my emotion about my
22 mountain or my turkey or my right to hunt and where
23 I want to hunt and when I want to hunt, which I
24 share as much as the next hunter, I'm going to
25 acknowledge that took place in the forums of the

1 past advisory working group, their public hearings,
2 and it continues to take place regularly before the
3 Fish and Game Commission regarding any hunting or
4 fishing issue. Those details and nuances of
5 hunting fairness or unfairness I will leave to the
6 working group and others, I'm going to spend the
7 bulk of my time on public regulation, policy, rule,
8 and process. In other words, how we got here
9 today.

10 Tim and Matt Craig of Boulder Creek
11 Outfitters thank you for organizing the working
12 group the past few years and for holding the
13 hearing today and hearing their view points that
14 were expressed by me.

15 The authority for Idaho Outfitter Guides
16 and Licensing Board to promulgate rules regulating
17 outfitting and guiding in Idaho is found in Idaho
18 Code Title 33, Chapter 21, and was upheld by the
19 Supreme Court in 1992. These regulatory findings
20 are fact, regardless of whether the outfitting and
21 guiding is for hunting deer or elk on public land,
22 pheasant on a private shooting preserve, fish in a
23 public stream or in a private fishing pond, or
24 pertaining to any other licensure issue of legally
25 huntable or fishable species in Idaho under the

1 purview of the IOGLB regulatory board.

2 Properly, Docket 25-0101-1201 authorizes
3 outfitters to offer outfitted and guided activities
4 on private lands. This docket extends only to
5 activities and situations involving private land,
6 as public land regulation is woven into and covered
7 by many other statutes, rules, policies, and
8 memoranda of agreement governing the IOGLB.

9 This docket for private lands is proper.
10 The rule docket clearly sets out procedures to
11 regulate commercial outfitting on private land,
12 execute private land leases, assign landowner
13 appreciation tags, designate business agents,
14 operate shared facilities on private land, and
15 operate as a club or group.

16 There has been much talk about policy
17 No. 2027-2013 initiated August 13, 2013, and
18 revised September 26, 2013, and now properly before
19 the Board for adoption.

20 Criticism centers on policy being
21 supposedly reserved for issues of an internal or
22 administrative nature of the Board such as
23 operating procedure, working hours, sick leave, or
24 even overtime. Board policy does cover these
25 administrative areas, but according to the Idaho

1 Supreme Court in *Sarco v. State*, clearly overviewed
2 by Mr. Waldon before me, policy is an applicable
3 tool for a state agency if such policy is widely
4 construed, is generally uniform, applicable to
5 everyone, guides operation-decisions processes,
6 operationalizes a legal standard, is agency
7 procedure, or interprets the law, it is allowed.
8 It is Boulder Creek's opinion that IOGLB policy
9 2027-2013 meets these tests.

10 In addition to specific statutory
11 authority with judicial backing, IOGLB has a long
12 precedence of utilizing policy as a regulatory
13 tool, possessing the full force and effect of law.
14 For example, contained within the IOGLB policy
15 manual are policies governing outfitter license
16 amendments, designating fishing areas and
17 activities, deer and elk tag allocation, and,
18 ironically, Mr. Chairman, a policy declaring a
19 moratorium on outfitted turkey and waterfowl
20 hunting.

21 Certainly rule Docket 25-0101-1201,
22 dealing with any licensable activity or business
23 arrangements on private land concerning Idaho's
24 wildlife and fisheries, are a natural extension of
25 the specific turkey and waterfowl discussions, as

1 private land was the primary focus of the
2 discussion. And we all know private lands are not
3 exclusive to turkeys and ducks, but inclusive of
4 other wildlife and fish species throughout Idaho.

5 Therefore, rule Docket 25-0101-1201
6 clearly articulates what a landowner can and cannot
7 do regarding charging access fees, advertising
8 services, leasing lands, assigning a landowner
9 appreciation tag, or providing facilities to guests
10 regardless of the specie being a turkey, elk, duck,
11 or deer.

12 The moratorium, the working group.
13 Returning to the turkey and waterfowl moratorium
14 policy that no one objected to, No. 2027, it was
15 adopted June 6, 2009, and has been in full force
16 and effect for approximately four years and four
17 months. IOGLB policy. It is noteworthy that
18 opponents of policy No. 2027-2013 now authorizing
19 and establishing a process for IOGLB to consider
20 amending an outfitter license to allow outfitted
21 turkey hunting, did not testify against nor
22 subsequently have they complained about the
23 appropriateness of a policy tool to prohibit
24 outfitted turkey and waterfowl hunting.

25 The policy 2027-2013 declared the

1 moratorium to be temporary and shall only be in
2 place until a complete analysis and evaluation can
3 be conducted by the Board. It continues in
4 cooperation with, among others, Fish and Game,
5 industry representatives, and the public at large.

6 When one reviews the final report of
7 your working group and the membership that
8 comprised the working group that is exactly what
9 took place the last several months. IOGLB
10 initiated and the working group conducted
11 discussions, analysis, and evaluation of outfitter
12 activities as it relates to licensed outfitted
13 activities on public and private land relating to
14 all turkey and waterfowl hunting.

15 There is procedural significance
16 contained within the moratorium policy of 2009 that
17 you adopted. It's worthy of review today because
18 it set forth the very procedures that lead the
19 IOGLB Advisory Working Group through their
20 meetings, issues review, compromise decision, and
21 now the policy and rule in front of you today.

22 The moratorium policy put into place
23 sets out detailed procedures, designated as 5.00
24 and labeled as matters that need consideration.
25 They are, number one, gather and review information

1 data; two, facilitate interested representatives to
2 establish positions on services, access,
3 opportunity and restrictions; three, consider past
4 issues and comments regarding rule and statutes;
5 four, understand public and need; and, five, reach
6 a final disposition because a temporary moratorium
7 is not a appropriate response.

8 MR. HALES: John, I'm going to ask you to
9 wrap it up. We've got a time limit on everybody
10 here.

11 MR. WATTS: Thank you.

12 Each of these five matters have been
13 explored, discussed, negotiated, and compromised by
14 IOGLB working group. The recommendations from the
15 discussions are contained in the work group's
16 report on January 2011 on pages 2 through 7, and
17 the consensus solution found on page 4. Very
18 importantly, the contents of the consensus solution
19 reached by the advisory working group represents
20 the foundation for the content set forth in Policy
21 2027 and the Docket 25-0101-1201.

22 As a result, each of the matters
23 explored individually and collectively, the IOGLB
24 has formulated turkey outfitting and guiding
25 governing policy and private land and waters before

1 you for adoption. Tim and Matt Craig, licensed
2 owners and operators of Boulder Creek Outfitters,
3 urge your support for the adoption of Policy
4 2027-2013 and rule Docket 25-0101-1201.

5 Let me just conclude, Mr. Chairman, with
6 a little discussion about policy detail. The
7 detail of the policy and rule setting forth
8 regulations for turkey and waterfowl outfitting
9 licensure and private landowner operations related
10 to outfitting and guiding are very detailed, very
11 specific, and very enforceable.

12 As a matter of fact, if you review the
13 existing policy manual of IOGLB, you will find
14 examples of rules that contained the very same
15 things. Yes. In the table of contents there is
16 working hours, there is board procedures, and there
17 is sick leave. There is also license amendment
18 procedures, one-time controlled hunt moratoriums,
19 moratoriums on outfitted waterfowl, game, and
20 turkey hunting, and licensing hazardous excursion.

21 Let me just end by pointing that one
22 out. The detail in licensing hazardous excursions
23 in policy of this board goes as far as the depth of
24 a water body in which you can do training for a
25 guide to be a fly fisherman. No more than eight

1 feet.

2 It also says that a person that wants to
3 give backcountry mountain bike rides must train on
4 slopes greater than 5 percent. Incredible detail.

5 If you look in your allocation policy,
6 you'll also find factor formulas for dividing out
7 tags and leftover tags.

8 In summary, regardless of the scenario
9 executed by the landowner, whether they post their
10 land to allow nobody on that, or whether they sell
11 that right to a private hunter for himself and his
12 friends, whether they lease it to an outfitter, or
13 whether they allow anyone that wants on to get on,
14 that decision rests with the landowner. All this
15 body can do is regulate the outfitters and the
16 activities that might take place on that.

17 Therefore, these rules and this policy is properly
18 before this committee, and we urge your adoption.
19 Thank you very much.

20 MR. HALES: Looks like the next person who
21 signed up to testify is Jay Stark.

22
23 JAY STARK,
24 came forward and gave the following statement:
25

1 MR. STARK: I'd like to start out by
2 thanking the Board for giving me the opportunity to
3 speak here today. I'm going to keep it pretty
4 short.

5 Just, you know, as a sportsman, we
6 participated in good faith in these negotiated rule
7 processes over this whole time, and I'm a little
8 bit disappointed, as most sportsmen are, in the
9 actions of the Board as regards to Sections 3, 4,
10 and 5. My concerns with what we're moving forward
11 with deals strictly with Item 1 under Section 2-B
12 dealing with LAP. I think that if that section
13 there were strictly removed from here, then those
14 landowners charging an access fee and gifting that
15 LAP would also be required to maintain that OG-10
16 form; therefore, reporting that taxable income to
17 the state. I don't think this board should be
18 eliminating individuals from reporting their
19 taxable income to the state. And that's all I have
20 on that.

21 MR. LONG: Sir, I did not catch your name.
22 I'm sorry.

23 MR. STARK: Jay Stark.

24 MR. LONG: And tell me again what exactly --

25 MR. STARK: On the last page here under

1 Section B -- Item 2, Section B, bold point one, and
2 it's the only section in here I can find dealing
3 with the LAP tag.

4 And I'm not sure exactly when it got
5 added into this, because it wasn't under the first
6 couple of draft rules that I could find, but the
7 way I interpret this is it would be people charging
8 a trespass fee and gifting someone that LAP tag --
9 I'm not saying that we shouldn't do that -- but be
10 required just like the rest of the landowners would
11 be, charging to do an access fee or renting their
12 land to -- charging the trespass fee for somebody
13 for waterfowl hunting. You're excluding them from
14 having to report taxable income to the state. And
15 LAP -- some of those tags are worth a considerable
16 amount of money. That's what -- with what you're
17 "moving forward with," -- because it all primarily
18 deals with private property rights -- that would be
19 my main concern with that portion of it.

20 Now, what you excluded from rulemaking,
21 that's another issue.

22 That's all I have unless there are
23 anymore questions.

24 MR. HALES: Thank you, sir.

25 And so, Lori, do we have anybody else

1 that's signed up at this point?

2 MS. THOMASON: No.

3 MR. HALES: So I'm going to read the list of
4 people who have signed up and decided not to
5 testify, just to make sure anybody else desires at
6 this point.

7 John May?

8 MR. MAY: No thank you.

9 MR. HALES: Jake Powell?

10 MR. POWELL: No response.

11 MR. HALES: Mike Lawson?

12 MR. LAWSON: I'll take it.

13 MR. HALES: Okay.

14
15 MIKE LAWSON,
16 came forward and gave the following statement:

17
18 MR. LAWSON: Mr. Chairman and board members,
19 I appreciate your being here.

20 I'm from St. Anthony, Idaho. I'm one of
21 the outfitters that does have waterfowl
22 grandfathered in up on Henry's Fork of the Snake,
23 and I'm also a landowner. And I didn't sign up to
24 testify to start with because I was on the advisory
25 working group. So I thought you probably already

1 heard all you needed to hear from me.

2 But there's just a couple of points I
3 would like to make as a result of my experience on
4 the advisory working group. And that is that there
5 was absolutely no compromise. I support what the
6 Board's done because, what I think happened, in my
7 opinion, with the working group, is the members of
8 the hunting representatives there had absolutely no
9 interest at all in any kind of compromise to try to
10 resolve anything. They had one position and that
11 is to make the moratorium permanent, and that was
12 it.

13 So, consequently, it was very
14 frustrating to come over here to all those
15 meetings. And I believe that everyone involved did
16 everything possible to try to meet the wishes of
17 the hunting group, and nothing worked.

18 And, you know, I felt like also that
19 their position has been numbers. They're talking
20 about all the numbers they have. But they have
21 organized clubs and groups. And they were able to
22 make phone calls, send out emails, have their group
23 meetings, and communicate every way with members of
24 their groups. And certainly their groups heard
25 their side of it. They didn't hear the rest of our

1 positions, from the landowners and the outfitters.

2 And I felt like, as an outfitter and as
3 a landowner, we were really at a disadvantage
4 because there are very few outfitters that I know
5 -- and I have been an outfitter for 36 years --
6 that are really interested in this. There is not a
7 lot. And, consequently, I don't think there's a
8 lot of landowners. So when we started dealing with
9 numbers, how many for and how many against, it just
10 wasn't -- I don't think that's an issue.

11 What I would like to point out is that
12 landowners provide a lot of opportunity for the
13 general public, especially with waterfowl.
14 Waterfowl aren't born and live their whole life on
15 one piece of land. And I know for myself, for
16 example, we have three ponds that consist of about
17 probably eight acres, and it's exclusively used for
18 waterfowl nesting. So far, I haven't shot a duck
19 this year -- I plan to, but -- I don't know. You
20 know, I look at all the surrounding areas where I
21 am at, and a lot of people are benefitting from my
22 efforts, providing a waterfowl nesting habitat,
23 which has been very successful for us, and I have
24 done it at my own expense, not taking money from
25 Ducks Unlimited or any other groups. And we do

1 provide access for people that come and ask.

2 But the fact of the matter is even
3 though I'm an outfitter and have been -- as I said,
4 had a waterfowl permit that was grandfathered in on
5 public land -- as it stands right now, with the
6 moratorium, I can't provide outfitting and guiding
7 opportunities on my own property with the way this
8 moratorium has come down right now.

9 And the last thing I would like to say
10 is the reason this is about the only option I think
11 left is that because these opportunities should be
12 looked at on a state-by-state -- I mean on a
13 case-by-case basis.

14 I was very frustrated in the fact that
15 most of these guys that are involved with the
16 hunters groups are from the Boise area. And the
17 Boise area, I'm sure -- I have never hunted over
18 here. I've tried hunting pheasants over here. I
19 can't get on any property anywhere. But I'm sure
20 it's very congested and probably shouldn't have
21 waterfowl outfitting in these local waters close to
22 Boise here on the Snake. But it's St. Anthony's,
23 not Boise. And their intent is to make this
24 statewide; to make one rule that fits all. And
25 that's just not the way it works; that's not the

1 way it's ever worked. With big game, that's been
2 in existence in Idaho as long as I can remember,
3 and I don't think it's had an adverse effect on the
4 general public.

5 Landowners should have the right to
6 provide the type of access that they want to
7 provide, whether it be open access or whether they
8 would prefer to be part of an outfitting business.

9 And that's all I have. I really
10 appreciate your giving me the opportunity to come
11 over here and testify.

12 MR. HALE: Thank you.

13 Gregory Bartholomew?

14 Larry Fry, care to testify?

15
16 LARRY FRY,
17 came forward and gave the following statement:

18
19 MR. FRY: Yes, actually. To the members of
20 the board, thanks a lot for putting this hearing
21 on.

22 I'm part of one of those groups,
23 Mr. Lawson, over here in Boise that have all emails
24 and everything, and if you saw all the members for
25 -- the guys I meet and email how many of them email

1 back, you would say, "Yeah. Okay," because not
2 many of them do.

3 The main concern I have with this policy
4 is the difference between the policy as it stands
5 today and the policy as it was presented a few
6 months ago. There is probably room in the IOGLB
7 and other governing bodies on a case-by-case basis
8 for landowners to guide their own land. I have no
9 real opinion about that. I think there's probably
10 room for that.

11 This current policy, though now, instead
12 of just waterfowl and turkey, is encompassing
13 everything from soup to nuts. And that's not
14 exactly what we were presented with back in August.

15 And that's all I've got to say. This
16 has changed so much in the last three months, four
17 months, since it was conceived, that it really
18 needs to be reconsidered and perhaps even
19 rewritten.

20 That's it. Thanks.

21 MR. HALES: Thank you, sir.

22 Dick Gardner?

23 MR. GARDNER: No, sir.

24 MR. HALES: Okay. That concludes those
25 individuals who have signed up on the list. Anyone

1 else that hasn't signed up on the list that wants
2 to testify today? Okay.

3 So, Mr. Chairman, you can stand in
4 recess for a while. We can see if additional
5 people want to come in, but we need to keep this
6 hearing open until 5 o'clock to give anybody that
7 comes in late a full opportunity to comment.

8 MR. HUNSUCKER: I'll go ahead and recess the
9 meeting. And we'll reconvene in 20 minutes to see
10 if we have additional sign-ups.

11 MR. HALES: Okay.

12 (Recess taken from 4:01 p.m. to 4:54 p.m.)

13 MR. HUNSUCKER: We call this meeting back
14 into session. No further comments, no more
15 attendees to the meeting. We're calling a close to
16 the hearing.

17 MR. HALES: Well, let's ask the question,
18 Mr. Chairman.

19 Is there anybody here that would like to
20 make any additional comments on the rules? Okay.

21 Mr. Chairman, I think you can close the
22 hearing at this point.

23 MR. HUNSUCKER: With that then, I'm going to
24 close the hearing, and then I'm going to adjourn --
25 recess the meeting until tomorrow morning at our

normally scheduled time on the agenda.

(Conclusion of proceedings at 4:55 p.m.)



A handwritten signature in black ink, appearing to read "Kline".